

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

ROBERT MOORE, §
§
Plaintiff, §
§
v. § Civil Action No. 3:19-CV-00279
§
U.S. IMMIGRATION AND CUSTOMS §
ENFORCEMENT; U.S. CUSTOMS AND §
BORDER PROTECTION; AND §
U.S. DEPARTMENT OF HEALTH §
AND HUMAN SERVICES, §
§
Defendants. § COMPLAINT FOR
§ DECLARATORY AND
§ INJUNCTIVE RELIEF

PLAINTIFF'S ORIGINAL COMPLAINT

I. PRELIMINARY STATEMENT

1. Robert Moore is a reporter who has conducted award-winning investigative journalism in the El Paso region for more than 25 years.

2. From June 2018 to March 2019, Mr. Moore submitted five requests for information under the Freedom of Information Act (“FOIA”) to three federal agencies as part of his efforts to educate the public. The requests seek critical records related to border enforcement, fundamental shifts in the treatment of asylum-seekers, and operation of immigration detention facilities in El Paso.

3. The “basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the government accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

4. When a FOIA request is made, the agency must communicate a determination regarding the request and “the reasons therefor” within 20 working days of the original request or,

in “unusual circumstances,” within 30 working days. 5 U.S.C. § 552(a)(6)(A)(i), (a)(6)(B)(i). After this determination, the agency must make the documents “promptly available,” which depending on the circumstances typically would mean within days or a few weeks of a ‘determination,’ not months or years.” *Citizens for Responsibility and Ethics in Washington v. Fed. Election Com’n*, 711 F.3d 180, 188 (D.C. Cir. 2013) (citing 5 U.S.C. § 552(a)(3)(A), a(6)(C)(i)).

5. From June 2018 to April 2019, Mr. Robert Moore (“Mr. Moore” or “Plaintiff”) submitted five FOIA requests to various federal agencies regarding critical matters along the U.S.-Mexico border. Today, over fifteen months from the submission of the first request, Mr. Moore has not received a single document from any of the agencies.

6. This case is about the unlawful refusal of U.S. Immigration and Customs Enforcement (“ICE”), the U.S. Customs and Border Protection (“CBP”), and the U.S. Department of Health and Human Services (“HHS”) to timely and fully release agency records without any regard for the FOIA and its statutory requirements.

7. Defendants in this case have a pattern of refusing to timely communicate and produce documents in response to Mr. Moore’s requests as required by the FOIA. Defendants’ repeated failure to comply with governmental transparency rules poses a danger – not just to Mr. Moore – but to all news media and advocacy organizations seeking to provide information to the public at a time that the federal government is fundamentally restructuring border security and immigration in the region.

II. JURISDICTION AND VENUE

8. This Court has subject-matter jurisdiction over Plaintiff’s FOIA claims pursuant to 28 U.S.C. § 1331 (federal question) and 5 U.S.C. § 552(a)(4)(B) (FOIA). Plaintiffs’ request for declaratory and other relief is properly subject to this Court’s subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202.

9. Venue is proper within this District under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1391(b)(1), (b)(2), and (e)(1).

III. PARTIES

10. Plaintiff **Robert Moore** is a local journalist who resides in El Paso County, Texas.

11. Robert Moore is an independent journalist and President and CEO of El Paso Matters – a nonprofit news organization focused on in-depth and investigative reporting about El Paso and the Paso del Norte region. He writes regularly for the Washington Post, Texas Monthly, and other national, international and regional news organizations. He served in leadership roles at the El Paso Times from 1986 to 2005 and as Editor from 2011 to 2017. He has also won awards from such organizations as the National Press Foundation, the Freedom of Information Foundation of Texas, and the Texas Press Association.

12. An integral part of Mr. Moore’s work is unveiling and explaining critical information about the federal government to the region, nation, and world. By informing the public, his reporting has helped lead to policy changes at the border.

13. Timely, complete, and accurate information about ongoing government operations is key to the effectiveness of Mr. Moore’s reporting.

14. Plaintiff has constructively exhausted all non-futile administrative remedies.

15. Defendant **U.S. Immigration and Customs Enforcement** (“ICE”) is an executive agency component of the U.S. Department of Homeland Security (“DHS”) and an “agency” within the meaning of 5 U.S.C. § 552(f)(1).

16. Defendant **U.S. Customs and Border Protection** (“CBP”) is an executive agency component of the U.S. Department of Homeland Security (“DHS”) and an “agency” within the meaning of 5 U.S.C. § 552(f)(1).

17. Defendant **U.S. Department of Health and Human Services** (“HHS”) and its sub agency, Adult and Family Services are executive agencies within the meaning of 5 U.S.C. § 552(f)(1).

IV. FACTS

A. First Request.

18. On June 16, 2018, Plaintiff submitted FOIA request no. CBP-2018-064544 to CBP via the agency’s online portal seeking: “any and all directives, emails, text messages and other communications from CBP officials regarding the handling of potential asylum seekers at ports of entry when port facilities are at ‘capacity.’ The period covered by this request is Jan. 1, 2018 to June 16, 2018.”

19. The agency acknowledged receipt of the request on June 19, 2018. Ex. 1.

20. On July 31, 2018 – over the statutory deadline for agency response – Plaintiff requested an update of the status of the FOIA request via email and via the CBP online portal. He received no substantive response through the portal.

21. On August 25, 2018, Mr. Moore requested an update from the public affairs officer, Roger Maier, by email. Ex. 2.

22. On August 26, 2018, Mr. Maier responded stating “FOIA is separate from public affairs but I’ll see if I can track something this week.” Ex. 3.

23. Seven months later, on March 27, 2019, CBP granted Plaintiff’s fee waiver. Ex. 4.

24. Over three months later, Mr. Moore requested an update by email from the Acting Assistant Secretary of Homeland Security for Public Affairs, Andrew Meehan. Plaintiff received no response from Mr. Meehan to date. Ex. 5.

25. CBP has never produced a single document to Plaintiff in response to his June 16, 2018 FOIA request nor has it made a determination regarding this request.

B. Second Request.

26. On June 22, 2018, Plaintiff submitted a FOIA request to ICE via the agency's online portal seeking: “[a]ny memoranda of understanding or agreement between DHS and the Department of Health and Human Services created since January 20, 2017. That includes an[y] such memoranda regarding the Office of Refugee Resettlement” and “[a]n[y] correspondence to or from ICE officials, including text messages or emails, regarding the use of ORR databases for enforcement purposes.” Ex. 6.

27. On June 27, 2018, ICE referred Plaintiff's request to the Department of Homeland Security's Privacy Office as the appropriate agency to receive the request. Ex. 7.

28. Plaintiff did not hear a response from ICE or DHS at any point from June 2018 until July 2019.

29. On July 1, 2019, after receiving no response from ICE, Plaintiff emailed Mr. Meehan requesting an update on his FOIA request. To that point, the response had not even been assigned a case number with either ICE or DHS. Ex. 5.

30. On July 16, 2019, Plaintiff emailed a request to the DHS Privacy Office – the agency which ICE had indicated over a year earlier would be handling his request. Ex. 8.

31. On July 19, 2019, the DHS Privacy Office contacted Plaintiff. DHS claimed, in this letter, that Plaintiff's request was dated June 22, 2018 but, “received in this office on July 16, 2019.” It went on to inform Plaintiff that it would be transferring his request back to the FOIA Officer for ICE – the agency to which Plaintiff originally requested the information thirteen months earlier. Ex. 9.

32. On July 29, 2019, over thirteen months after Plaintiff submitted his initial request, ICE finally acknowledged receipt of his complaint – which it falsely claimed it received on July

19, 2019. This is the first time ICE identified Plaintiff's request with a case number – ICE 2019-ICFO-49560. Ex. 10.

33. In this receipt, ICE requested clarification of Plaintiff's request – which Plaintiff provided on the very same day by e-mail. Ex. 11.

34. To this date, fifteen months since the initial request and two months since ICE requested clarification, ICE has failed to produce a single document to Plaintiff in response to his June 22, 2018 FOIA request nor has it made a determination regarding this request.

C. Third Request.

35. On June 22, 2018, Plaintiff submitted a FOIA request to HHS via the agency's online portal seeking: "a memoranda of understanding or agreement between the Department of Health and Human Services and the Department of Homeland Security since Jan. 20, 2017" and "[a]ny correspondence, including emails and text messages, regarding access to HHS databases, including those maintained by the Office of Refugee Resettlement, by Department of Homeland Security officials. (Date Range for Record Search: From 01/20/2017 To 06/22/2018)."

36. On the same day, HHS acknowledged receipt of the request, identified it as case number 2018-01128-FOIA-OS, and transferred the request to the sub-agency, Administration for Children and Families ("ASF"). Ex. 12.

37. On August 1, 2018, the ASF acknowledged receipt of Plaintiff's request and re-assigned it as case number HHS 18-F-0410. Ex. 13.

38. On September 12, 2018, Mr. Moore requested an update and received a cursory response. Ex. 14.

39. One year later, on September 23, 2019, Plaintiff again requested an update. Ex. 15.

40. Finally, on September 25, 2019, fifteen months after the initial request, HHS asked for clarification in Plaintiff's request. Ex. 16. Plaintiff provided a detailed response the same day.

41. To date, fifteen months from the date of Plaintiff's initial FOIA request, neither HHS nor its sub-agency, the ACF, has produced a single document or provided an agency determination to Plaintiff.

D. Fourth Request.

42. On November 11, 2018, Plaintiff submitted a FOIA request to CBP via the agency's online portal seeking: "emails, text messages, memoranda and all other written communication regarding a Mobile Field Force Demonstration originally scheduled for November 6, 2018, in El Paso, Texas. A press release on the event described its location as 'the railroad crossing west of the Paso Del Norte Port of Entry.' The time period covered by my request is October 1, 2018, to November 11, 2018." Ex. 17.

43. On November 27, 2018, CBP identified the request as CBP-2019-010211 and claimed that it was making a "modification" to Plaintiff's request description. Ex. 18.

44. Eight months after the request was made, CBP's FOIA office emailed Plaintiff claiming that it was changing the request number to CBP-OFO-2019-010211. Ex. 19.

45. To date, ten months from the date of Plaintiff's initial FOIA request, CBP has failed to produce a single document or provide Plaintiff with an agency determination regarding any aspect of his request.

E. Fifth Request.

46. On March 29, 2019, Plaintiff submitted a FOIA request to ICE via the agency's online portal seeking: "Emails, texts, letters, reports or other written communication regarding the following two requests for media interviews at the El Paso Processing Center: 1) An email sent on March 13, 2019, by Robert Moore to Leticia Zamarripa seeking to interview Rajandeep Singh. 2) An email sent on March 17, 2019, by Robert Moore to Leticia Zamarripa seeking to interview Jasvir Singh. 3) A faxed request sent on March 19, 2019, by Robert Moore to Field Office Director

Corey A. Price seeking to interview Rajandeep Singh and Jasvir Singh. The period covered by this request is March 13, 2019, to March 26, 2019. The request includes but is not limited to communications to and from Leticia Zamarripa and Corey A. Price.” Ex. 20.

47. On April 9, 2019, ICE acknowledged the request, assigned case number ICE 2019-ICFO-33608, and requested that Plaintiff provide consent from third parties to the request. Ex. 21.

48. On the same day, Plaintiff reiterated by email that he was seeking records regarding his own interview request and was not requesting information on behalf of any third party. Ex. 22.

49. On April 24, 2019, ICE asked for a Certification of Identity from Plaintiff. Ex. 23.

50. On the same day, Plaintiff provides a Certificate of Identity form filled out with his information to the ICE FOIA office. Ex. 24.

51. To date, six months from the date of Plaintiff’s initial FOIA request, ICE has failed to produce a single document or provide Plaintiff with an agency determination regarding his request.

V. CLAIMS FOR RELIEF

COUNT ONE: VIOLATION OF THE FREEDOM OF INFORMATION ACT 5 U.S.C. § 552(a)(4)(B) UNLAWFUL WITHHOLDING OF AGENCY RECORDS BY ALL DEFENDANTS

52. Plaintiff re-alleges and incorporates by reference all allegations in the foregoing paragraphs.

53. Plaintiff has a legal right under FOIA to the timely search and release of responsive, non-exempt agency records responsive to his five FOIA requests listed above.

54. No legal basis exists for the failure to adequately and timely search for and release responsive agency records in compliance with FOIA’s time limits by ICE, CBP, or HHS.

55. The agencies' failure to make reasonable and timely efforts to search for and release responsive agency records constitutes an unlawful withholding under the Act that this Court can and should remedy through declaration and injunction.

56. Because the agencies have failed to comply with the Act's time limits – including its failure to provide a simple determination to Plaintiff within the Act's time limits – Plaintiff has constructively exhausted his administrative remedies.

VI. REQUEST FOR RELIEF

Wherefore, Plaintiff respectfully requests that this Court:

1. Enter judgment in favor of Plaintiff and against all Defendants.
2. Declare Defendants' withholdings under the FOIA unlawful and enjoin these unlawful withholdings.
3. Order Defendants to conduct a prompt and adequate search for all responsive records, determine which, if any portions of such records are exempt, and require Defendants to release the remaining portions of these agency records.
4. Award Plaintiff reasonable costs and attorney's fees pursuant to 5 U.S.C. § 552(a)(4)(E) and/or 28 U.S.C. § 2412(d)(1)(A).
5. Award Plaintiff such further relief as the Court deems just, equitable, and appropriate.

Submitted: October 1, 2019

Respectfully submitted,

THE LAW OFFICE OF LYNN COYLE, PLLC
2515 N. Stanton Street
El Paso, Texas 79902
Telephone: (915) 532-5544
Facsimile: (915) 532-5566

/s/ Lynn Coyle
LYNN COYLE
State Bar No. 24050049
lynn@coylefirm.com
CHRISTOPHER BENOIT
State Bar No. 24068653
chris@coylefirm.com

EXHIBIT 1

90 K Street NE
MS 1181
Washington, DC 20229

Robert Moore
711 Blanchard Ave.
El Paso, TX 79902

June 19, 2018

Dear Robert Moore,

Robert Moore

711 Blanchard Ave. El Paso TX 79902

Dear Robert Moore:

This automated notice acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP) received on 06/16/2018. Please use the following unique FOIA tracking number CBP-2018-064544 to track the status of your request. If you have not already done so, you must create a FOIAonline account at <https://foiaonline.regulations.gov>. This is the only method available to check the status of your pending FOIA request.

Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS FOIA regulations outlined on the DHS website, <https://www.federalregister.gov/documents/2016/11/22/2016-28095/freedom-of-information-act-regulations>. By submitting your request, you have agreed to pay up to \$25.00 in applicable processing fees, if any fees associated with your request exceed this amount, CBP shall contact you; however, the first 100 pages are free.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. Part 5 §5.5(a) of the DHS FOIA regulations, CBP processes FOIA requests according to their order of receipt. Although CBP's goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances pursuant to 6 C.F.R. Part 5 §5.5(c).

For additional information please consult CBP FOIA website please click on [FOIA Act Resources](#) or visit <http://www.cbp.gov/site-policy-notices/foia>.

Sincerely,

FOIA Division
U.S. Customs and Border Protection

EXHIBIT 2

Gmail FOIA request
Robert Moore <bmooreep@gmail.com>

FOIA request

Robert Moore <bmooreep@gmail.com>
To: "MAIER, ROGER" <ROGER.MAIER@cbp.dhs.gov>

Sat, Aug 25, 2018 at 8:03 PM

Roger:

I was hoping you could help me track down the status of a FOIA request I filed in June. The online FOIA site I used gave a completion date of July 18, but I haven't heard anything from CBP FOIA, such as a request for extension. The website doesn't give any email address to contact for follow up, at least that I could find.

The request number is CBP-OIT-2018-064544.

Bob

EXHIBIT

3

Gmail FOIA request
Robert Moore <bmooreep@gmail.com>

FOIA request

MAIER, ROGER <ROGER.MAIER@cbp.dhs.gov>
To: Robert Moore <bmooreep@gmail.com>

Sun, Aug 26, 2018 at 8:53 AM

FOIA is separate from public affairs but I'll see if I can track something this week.

Sent from my Verizon, Samsung Galaxy smartphone
[Quoted text hidden]

EXHIBIT

4



Robert Moore <bmooreep@gmail.com>

FOIA Fee Waiver Disposition Reached for CBP-OIT-2018-064544

admin@foiaonline.gov <admin@foiaonline.gov>
To: bmooreep@gmail.com

Wed, Mar 27, 2019 at 10:36 AM

Your request for Fee Waiver for the FOIA request CBP-OIT-2018-064544 has been fully granted. Additional details for this request are as follows:

- Request Created on: 07/03/2018
- Request Description: I am seeking any and all directives, emails, text messages and other communications from CBP officials regarding the handling of potential asylum seekers at ports of entry when port facilities are at "capacity." The period covered by this request is Jan. 1, 2018, to June 16, 2018.
- Fee Waiver Original Justification: I am requesting this material as a journalist to inform the public of CBP policies and activities.
- Fee Waiver Disposition Reason: N/A

EXHIBIT

5



Robert Moore <bmooreep@gmail.com>

Form submission from: DHS FOIA / Privacy Act Request Submission Form

Robert Moore <bmooreep@gmail.com>
To: "Meehan, Andrew" <andrew.meehan@hq.dhs.gov>

Mon, Jul 1, 2019 at 10:46 AM

Following up form last night, below is one of two FOIA's I submitted to DHS agencies that are now more than a year old.

The second is one I submitted to CBP through the FOIA portal. It's been assigned number CBP-2018-064544.

I really enjoyed talking with you. Enjoy your stay in El Paso.

[Quoted text hidden]

EXHIBIT

6



Robert Moore <bmooreep@gmail.com>

Form submission from: DHS FOIA / Privacy Act Request Submission Form

WCM DHS <wcmmonitoring@dhs.gov>
Reply-To: Homeland Security <bmooreep@gmail.com>
To: bmooreep@gmail.com

Fri, Jun 22, 2018 at 10:24 AM

Submitted on Friday, June 22, 2018 - 12:24

Submitted by user: Anonymous

Submitted values are:

Select the DHS component you wish to submit your request to: : U.S.

Immigration and Customs Enforcement (ICE)

Title:

First Name: Robert

Middle Initial:

Last Name: Moore

Suffix:

Email Address: bmooreep@gmail.com

Country: United States

Address 1: 711 Blanchard Ave.

Address 2:

City: El Paso

State: Texas

Zip Code: 79902

Telephone Number: 9155887678

Fax Number:

Are you requesting records on yourself? No

If yes, you must check the perjury statement:

By initialing here you are providing your electronic signature.: Robert Moore

Please describe the records you are seeking as clearly and precisely as

possible:

I am seeking:

Any memoranda of understanding or agreement between DHS and the Department of Health and Human Services created since January 20, 2017. That includes and such memoranda regarding the Office of Refugee Resettlement.

An correspondence to or from ICE officials, including text messages or emails, regarding the use of ORR databases for enforcement purposes.

I am willing to pay fees for this request up to the amount of: \$: 100

Select from the list below: A representative of the news media seeking information as part of a news gathering effort and not for commercial use.

I request a waiver of all fees for this request.: I request a waiver of all

fees for this request.

Please provide an explanation for your request for a fee waiver: I am working as a journalist, explaining to the public the functions of the Department of Homeland Security. Such work is inherently in the public interest.

Please select and describe in detail if you believe your request warrants expeditious handling:

Please provide information to support your selection:

EXHIBIT

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Robert Moore <bmooreep@gmail.com>

RE: Form submission from: DHS FOIA / Privacy Act Request Submission Form

ICE-FOIA <ICE-FOIA@ice.dhs.gov>
To: "bmooreep@gmail.com" <bmooreep@gmail.com>

Wed, Jun 27, 2018 at 3:25 PM

Good evening,
After careful review of your request, we have decided that it would fall under the Department of Homeland Security Privacy Office. We have forwarded your request to their office. The contact information is below:

Karen Neuman
Chief Privacy Officer/Chief FOIA Officer
The Privacy Office
245 Murray Lane SW
Mail Stop - 0305
Washington, D.C. 20528-0305
Phone: 202-343-1717
E-mail: privacy@dhs.gov

Sincerely,
ICE FOIA

-----Original Message-----

From: webpublishing@hq.dhs.gov [mailto:webpublishing@hq.dhs.gov] On Behalf Of WCM DHS
Sent: Friday, June 22, 2018 12:24 PM
To: ice-foia@dhs.gov
Subject: Form submission from: DHS FOIA / Privacy Act Request Submission Form

Submitted on Friday, June 22, 2018 - 12:24 Submitted by user: Anonymous Submitted values are:

Select the DHS component you wish to submit your request to: : U.S.

Immigration and Customs Enforcement (ICE)

Title:

First Name: Robert

Middle Initial:

Last Name: Moore

Suffix:

Email Address: bmooreep@gmail.com

Country: United States

Address 1: 711 Blanchard Ave.

Address 2:

City: El Paso

State: Texas

Zip Code: 79902

Telephone Number: 9155887678

Fax Number:

Are you requesting records on yourself? No If yes, you must check the perjury statement:

By initialing here you are providing your electronic signature.: Robert Moore Please describe the records you are seeking as clearly and precisely as possible:

I am seeking:

Any memoranda of understanding or agreement between DHS and the Department of Health and Human Services created since January 20, 2017. That includes and such memoranda regarding the Office of Refugee Resettlement.

An correspondence to or from ICE officials, including text messages or emails, regarding the use of ORR databases for enforcement purposes.

I am willing to pay fees for this request up to the amount of: \$: 100 Select from the list below: A representative of the news media seeking information as part of a news gathering effort and not for commercial use.

I request a waiver of all fees for this request.: I request a waiver of all fees for this request.

Please provide an explanation for your request for a fee waiver: I am working as a journalist, explaining to the public the functions of the Department of Homeland Security. Such work is inherently in the public interest.

Please select and describe in detail if you believe your request warrants expeditious handling:

Please provide information to support your selection:

EXHIBIT

8



Robert Moore <bmooreep@gmail.com>

RE: Form submission from: DHS FOIA / Privacy Act Request Submission Form

Robert Moore <bmooreep@gmail.com>
To: privacy@dhs.gov

Tue, Jul 16, 2019 at 10:44 AM

Can you update me on the status of the FOIA request from June 2018 that is mentioned in this thread. ICE said the request was forwarded to your office more than a year ago and I have had no communication from you.

Robert Moore

On Wed, Jun 27, 2018 at 3:30 PM Robert Moore <bmooreep@gmail.com> wrote:

Thank you.

Sent from my iPhone

> On Jun 27, 2018, at 3:25 PM, ICE-FOIA <ICE-FOIA@ice.dhs.gov> wrote:

>

> Good evening,

> After careful review of your request, we have decided that it would fall under the Department of Homeland Security Privacy Office. We have forwarded your request to their office. The contact information is below:

>

> Karen Neuman

> Chief Privacy Officer/Chief FOIA Officer

> The Privacy Office

> 245 Murray Lane SW

> Mail Stop - 0305

> Washington, D.C. 20528-0305

> Phone: 202-343-1717

> E-mail: privacy@dhs.gov

>

> Sincerely,

> ICE FOIA

>

> -----Original Message-----

> From: webpublishing@hq.dhs.gov [mailto:webpublishing@hq.dhs.gov] On Behalf Of WCM DHS

> Sent: Friday, June 22, 2018 12:24 PM

> To: ice-foia@dhs.gov

> Subject: Form submission from: DHS FOIA / Privacy Act Request Submission Form

>

> Submitted on Friday, June 22, 2018 - 12:24 Submitted by user: Anonymous Submitted values are:

>

> Select the DHS component you wish to submit your request to: : U.S.

> Immigration and Customs Enforcement (ICE)

> Title:
> First Name: Robert
> Middle Initial:
> Last Name: Moore
> Suffix:
> Email Address: bmooreep@gmail.com
> Country: United States
> Address 1: 711 Blanchard Ave.
> Address 2:
> City: El Paso
> State: Texas
> Zip Code: 79902
> Telephone Number: 9155887678
> Fax Number:
> Are you requesting records on yourself? No If yes, you must check the perjury statement:
> By initialing here you are providing your electronic signature.: Robert Moore Please describe the records you are seeking as clearly and precisely as possible:
> I am seeking:
>
> Any memoranda of understanding or agreement between DHS and the Department of Health and Human Services created since January 20, 2017. That includes and such memoranda regarding the Office of Refugee Resettlement.
>
> An correspondence to or from ICE officials, including text messages or emails, regarding the use of ORR databases for enforcement purposes.
> I am willing to pay fees for this request up to the amount of: \$: 100 Select from the list below: A representative of the news media seeking information as part of a news gathering effort and not for commercial use.
> I request a waiver of all fees for this request.: I request a waiver of all fees for this request.
> Please provide an explanation for your request for a fee waiver: I am working as a journalist, explaining to the public the functions of the Department of Homeland Security. Such work is inherently in the public interest.
> Please select and describe in detail if you believe your request warrants expeditious handling:
> Please provide information to support your selection:
>
>
>

EXHIBIT

9

U.S. Department of Homeland Security
Washington, D.C. 20528



**Homeland
Security**

Privacy Office, Mail Stop 0655

July 19, 2019

SENT VIA E-MAIL TO: bmooreep@gmail.com

Robert Moore

Re: 2019-HQFO-01024

Dear Mr. Moore:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), Privacy Office, dated June 22, 2018, and received in this office on July 16, 2019. You requested documents regarding (1) any memoranda of understanding or agreement between DHS and the Department of Health and Human Services created since January 20, 2017. That includes and such memoranda regarding the Office of Refugee Resettlement, and (2) any correspondence to or from ICE officials, including text messages or emails, regarding the use of ORR databases for enforcement purpose.

Due to the subject matter of your request, I am transferring this request to the FOIA Officer for ICE. Please find their contact information below.

United States Immigration & Customs Enforcement (ICE)

Freedom of Information Act Office

500 12th Street, SW, Stop 5009

Washington, D.C. 20536-5009

FOIA Officer: Catrina Pavlik-Keenan

FOIA Requester Service Center Contact: Fernando Pineiro

Phone: 866-633-1182

Fax: 202-732-4265

E-mail: ice-foia@dhs.gov

ICE Website

If you need to contact our office again about this matter, please refer to **2019-HQFO-01024**. You may contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,

A handwritten signature in black ink that reads "James V.M. Holzer, Jr." The "V.M." is written above "Holzer" and "Jr." is written in a smaller script below it.

James Holzer
FOIA Program Specialist

EXHIBIT

10



Robert Moore <bmooreep@gmail.com>

ICE FOIA Request 2019-ICFO-49560

ice-foia@dhs.gov <ice-foia@dhs.gov>
To: bmooreep@gmail.com

Mon, Jul 29, 2019 at 1:55 PM

July 29, 2019

Robert Moore
El Paso, TX

RE: ICE FOIA Case Number 2019-ICFO-49560

Dear Mr. Moore:

This acknowledges receipt of your July 19, 2019, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for seeking records regarding (1) any memoranda of understanding or agreement between DHS and the Department of Health and Human Services created since January 20, 2017. That includes and such memoranda regarding the Office of Refugee Resettlement, and (2) any correspondence to or from ICE officials, including text messages or emails, regarding the use of ORR databases for enforcement purpose. Date Range for Record Search: From 1/20/2017 to 6/22/2018. Your request was received in this office on July 19, 2019.

After careful review of your FOIA request, we determined that your request is too broad in scope, did not specifically identify the records which you are seeking, or only posed questions to the agency. Records must be described in reasonably sufficient detail to enable government employees who are familiar with the subject area to locate records without placing an unreasonable burden upon the agency. For this reason, §5.3(b) of the DHS regulations, 6 C.F.R. Part 5, require that you describe the records you are seeking with as much information as possible to ensure that our search can locate them with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as , recipients, or, if known, the ICE program office you believe created and/or controls the record. The FOIA does not require an agency to create new records, answer questions posed by requesters, or attempt to interpret a request that does not identify specific records.

Please resubmit your request containing a reasonable description of the records you are seeking. Upon receipt of a perfected request, you will be advised as to the status of your request.

If we do not hear from you within 30 days from the date of this letter, we will assume you are no longer interested in this FOIA request, and the case will be administratively closed. Please be advised that this action is not a denial of your request and will not preclude you from filing other requests in the future.

Your request has been assigned reference number **2019-ICFO-49560**. Please refer to this identifier in any future correspondence. To check the status of an ICE FOIA/PA request, please visit <http://www.dhs.gov/foia-status>. Please note that to check the status of a request, you must enter the 2019-ICFO-49560 tracking number. If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office. You may send an e-mail to ice-foia@ice.dhs.gov, call toll free (866) 633-1182 , or you may contact our FOIA Public Liaison, Fernando Pineiro, in the same manner. Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770 ; toll free at 1-877-684-6448 ; or facsimile at 202-741-5769 .

Sincerely,

ICE FOIA Office

Immigration and Customs Enforcement

Freedom of Information Act Office

500 12th Street, S.W., Stop 5009

Washington, D.C. 20536-5009

Telephone: 1-866-633-1182

Visit our FOIA website at www.ice.gov/foia

EXHIBIT 11



Robert Moore <bmooreep@gmail.com>

ICE FOIA Request 2019-ICFO-49560

Robert Moore <bmooreep@gmail.com>
To: ice-foia@dhs.gov

Mon, Jul 29, 2019 at 2:10 PM

A couple of points:

- 1) This request was submitted to ICE on June 22, 2018, not July 19, 2019. ICE sent the request to DHS in June 2018, where it languished for more than a year before being sent back to ICE.
- 2) Part one of the request stated: "(1) any memoranda of understanding or agreement between DHS and the Department of Health and Human Services created since January 20, 2017. That includes and such memoranda regarding the Office of Refugee Resettlement." How is that over broad? It outlines specific agreements between ICE and other agencies. You have had this very defined request for specific agreements for more than a year and have not complied with the requirements of FOIA.
- 3) Please modify Part 2 of the request to read: "(2) any correspondence to or from Acting ICE Director Thomas Homan, including text messages or emails, regarding memoranda of agreement between DHS and/or ICE, and the Department of Health and Human Services and/or the Office of Refugee Resettlement; and correspondence, including text messages or emails, to or from Mr. Homan regarding the use of ORR databases for enforcement purpose. Date Range for Record Search: From 1/20/2017 to 6/22/2018."

Robert Moore
[Quoted text hidden]

EXHIBIT

12



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Assistant Secretary for Public Affairs
Washington, D.C. 20201

Refer to: Request Number **2018-01128-FOIA-OS**

June 22, 2018

Robert Moore
Journalist
711 Blanchard Ave.
El Paso, TX 79902
Via email: bmooreep@gmail.com

Dear Mr. Moore:

This acknowledges receipt of your June 22, 2018, Freedom of Information Act (FOIA) request, submitted to the Department of Health and Human Services (HHS), FOI/Privacy Acts Division. Specifically, you requested:

"An memoranda of understanding or agreement between the Department of Health and Human Services and the Department of Homeland Security since Jan. 20, 2017.

Any correspondence, including emails and text messages, regarding access to HHS databases, including those maintained by the Office of Refugee Resettlement, by Department of Homeland Security officials. (Date Range for Record Search: From 01/20/2017 To 06/22/2018)".

We received your request on **June 22, 2018**, and are referring it to the Administration for Children and Families (ACF) for direct response to you. You may check on the status of your request with ACF at 1-888-747-1861 or foia@acf.hhs.gov.

If you are not satisfied with any aspect of the processing and handling of this request, you have the right to seek dispute resolution services from:

Michael Bell
HHS FOIA Public Liaison
U.S. Department of Health and Human Services
Office of the Assistant Secretary for Public Affairs
Room 729H
200 Independence Avenue, S.W.
Washington, DC 20201

Telephone: (202) 260-0793
E-mail: HHS_FOIA_Public_Liaison@hhs.gov

and/or:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001

Telephone: 202-741-5770
Toll-Free: 1-877-684-6448
E-mail: ogis@nara.gov
Fax: 202-741-5769

Sincerely,

Natasha Taylor
Government Information Specialist
Main Office Line: 202-690-7453

EXHIBIT

13



Robert Moore <bmooreep@gmail.com>

Acknowledgement Letter

foia@acf.hhs.gov <foia@acf.hhs.gov>
To: bmooreep@gmail.com

Wed, Aug 1, 2018 at 10:06 AM

Case No: 18-F-0410

August 01, 2018

Robert Moore
Journalist
[711 Blanchard Avenue](#)
[El Paso, TX 79902](#)

Dear Robert Moore:

This will acknowledge receipt of your Freedom of Information Act (FOIA) request received by this office. Your request has been assigned a case number based on the time it was received in this office and is being processed as expeditiously as possible. The actual processing time will depend on the complexity of your request and whether sensitive records, voluminous records, extensive search, and/or consultation with other HHS components or other executive branch agencies are involved. There may be a charge for these records and, in some cases, the charges may be substantial.

If you have any questions, please email FOIA@acf.hhs.gov or call 1-888-747-1861, or write to us at:

Freedom of Information Act Office
Administration for Children and Families
4th Floor
Mary E. Switzer Building
[330 C Street, SW](#)
[Washington, D.C. 20201](#)

Please use the case tracking number at the top of the page when discussing your request.

Sincerely,

Kimberly N. Epstein
FOIA Officer
Administration for Children and Families

EXHIBIT

14



Robert Moore <bmooreep@gmail.com>

Seeking status of FOIA request

Robert Moore <bmooreep@gmail.com>
To: "ACF FOIA (ACF)" <FOIA@acf.hhs.gov>

Wed, Sep 12, 2018 at 11:30 AM

I am renewing my request for a status update on my FOIA request, made June 22. HHS is not complying with statutory requirements regarding FOIA requests. I have received no response to my initial request, or my follow up attempts. Can someone please provide me with an update on this request? The request number is 2018-01128-FOIA-OS.

Robert Moore
[Quoted text hidden]

EXHIBIT

15



Robert Moore <bmooreep@gmail.com>

Acknowledgement Letter

Robert Moore <bmooreep@gmail.com>
To: "ACF FOIA (ACF)" <foia@acf.hhs.gov>

Mon, Sep 23, 2019 at 9:39 AM

Can you update me on the status of this FOIA request? I have not received any communication since this acknowledgment of receipt more than a year ago.

Robert Moore
[Quoted text hidden]

EXHIBIT

16



Robert Moore <bmooreep@gmail.com>

Acknowledgement Letter

ACF FOIA (ACF) <FOIA@acf.hhs.gov>
To: Robert Moore <bmooreep@gmail.com>

Wed, Sep 25, 2019 at 5:56 AM

Good morning, Mr. Moore:

Our apologies for not reaching out to you sooner; the person handling your request has left the agency. I'll be assisting you from now on.

In looking at your request, I see that the program office has provided the MOU you requested, so I have that record in my possession. However, the second part of your request, "any correspondence, including emails and text messages, regarding access to HHS databases, including those maintained by the Office of Refugee Resettlement, by Department of Homeland Security officials" I am a little unclear about.

What do you mean when you say emails regarding access to HHS databases by DHS officials? Are you asking if we have any emails from DHS people requesting access to ORR databases? If so, that part of your request may need to go to DHS. Since we wouldn't have the names of the DHS employees to search, they would probably need to search their employees' emails to HHS requesting access to our databases.

Please let me know if I'm understanding you correctly. As to the MOU, I'll try to process that this week and get it out to you as soon as I can.

Thanks,

Alexis

ACF FOIA

[Quoted text hidden]

EXHIBIT

17

CBP-OFO-2019-010211 Request Details



Submitted



Evaluation



Assignment



Processing



Closed

Contact Information

Full Name	Robert Moore
Organization	
Email Address	bmooreep@gmail.com
Phone Number	9155887678
Fax Number	
Mailing Address Location	United States/US Territories
Address Line 1	711 Blanchard Ave.
Address Line 2	
City	El Paso
State/Province	TX
Zip Code/Postal Code	79902

Request Information

Agency	Office of Field Operations (OFO)
Will Pay Up To	\$100.00
Date Submitted	11/11/2018
Estimated Date of Completion	12/26/2018
Fee Category	N/A
Request Track	Simple
Request Phase	Assignment
Final Disposition	Undetermined

Additional Information

<https://www.foiaonline.gov/foiaonline/action/registered/submissionDetails?trackingNumber=CBP-OFO-2019-010211&type=Request>

Additional Information

Type of Records Requested	Other
On Behalf Of First	N/A
On Behalf Of Middle	N/A
On Behalf Of Last	N/A
Date of Birth	N/A
Aliases	N/A
Alien Number	N/A
Parents' Names	N/A

Description

Description I am seeking emails, text messages, memoranda and all other written communication regarding a Mobile Field Force Demonstration originally scheduled for November 6, 2018, in El Paso, Texas. A press release on the event described its location as "the railroad crossing west of the Paso Del Norte Port of Entry." The time period covered by my request is October 1, 2018, to November 11, 2018.

Request Expedited Processing

Made Request? No

Request a Fee Waiver

Made Request? Yes

Expedited Justification CBP considered this exercise to be in the public interest, as evidenced by the issuance of a news release and an invitation to the media to cover the exercise. The exercise became a point of public controversy, leading to allegations of voter intimidation on Election Day.

Supporting Files

Download	Attached File Name	Size (MB)	File Type
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No attachments have been added.

EXHIBIT

18



Robert Moore <bmooreep@gmail.com>

FOIA Request CBP-2019-010211 Modified

admin@foiaonline.gov <admin@foiaonline.gov>
To: bmooreep@gmail.com

Tue, Nov 27, 2018 at 5:55 AM

The FOIA request - CBP-2019-010211 description has been modified. Additional details for this item are as follows:

- Tracking Number: CBP-2019-010211
- Requester: Robert Moore
- Submitted Date: 11/11/2018
- Description: I am seeking emails, text messages, memoranda and all other written communication regarding a Mobile Field Force Demonstration originally scheduled for November 6, 2018, in El Paso, Texas. A press release on the event described its location as "the railroad crossing west of the Paso Del Norte Port of Entry." The time period covered by my request is October 1, 2018, to November 11, 2018.

EXHIBIT 19



010211



Compose

Inbox

1

Starred

Snoozed

Important

Sent

Drafts

Spam

Categories

EPMatters_News

Personal

Travel

**admin@foiaonline.gov**

to me

Mon, Jul 22, 12:23

The FOIA request CBP-2019-010211 has had its Tracking Number changed to CBP-OFO-2019-010211. This is no request being transferred to another agency (for example, EPA to Dept. of Commerce) or to a sub-agency to pro for this request are as follows:

- Old Tracking Number: CBP-2019-010211
- New Tracking Number: CBP-OFO-2019-010211
- Requester Name: Robert Moore
- Date Submitted: 11/11/2018
- Long Description: I am seeking emails, text messages, memoranda and all other written communication Field Force Demonstration originally scheduled for November 6, 2018, in El Paso, Texas. A press releas described its location as "the railroad crossing west of the Paso Del Norte Port of Entry." The time period is October 1, 2018, to November 11, 2018.

EXHIBIT

20

Gmail FOIA request
Robert Moore <bmooreep@gmail.com>

FOIA request

Robert Moore <bmooreep@gmail.com>
To: ICE-FOIA@dhs.gov

Tue, Mar 26, 2019 at 8:40 AM

Under the Freedom of Information Act, I am requesting the following:

Emails, texts, letters, reports or other written communication regarding the following two requests for media interviews at the El Paso Processing Center:

- 1) An email sent on March 13, 2019, by Robert Moore to Leticia Zamarripa seeking to interview Rajandeep Singh.
- 2) An email sent on March 17, 2019, by Robert Moore to Leticia Zamarripa seeking to interview Jasvir Singh.
- 3) A faxed request sent on March 19, 2019, by Robert Moore to Field Office Director Corey A. Price seeking to interview Rajandeep Singh and Jasvir Singh.

The period covered by this request is March 13, 2019, to March 26, 2019. The request includes but is not limited to communications to and from Leticia Zamarripa and Corey A. Price.

Robert Moore
El Paso, TX
915-588-7678

EXHIBIT

21



Robert Moore <bmooreep@gmail.com>

ICE FOIA Request 2019-ICFO-33608

ice-foia@dhs.gov <ice-foia@dhs.gov>
To: bmooreep@gmail.com

Tue, Apr 9, 2019 at 6:11 AM

April 09, 2019

Robert Moore
El Paso, TX

RE: ICE FOIA Case Number 2019-ICFO-33608

Dear Mr. Moore:

This acknowledges receipt of your March 26, 2019, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for Emails, texts, letters, reports or other written communication regarding the following two requests for media interviews at the El Paso Processing Center: 1) An email sent on March 13, 2019, by Robert Moore to Leticia Zamarripa seeking to interview Rajandep Singh. 2) An email sent on March 17, 2019, by Robert Moore to Leticia Zamarripa seeking to interview Jasvir Singh. 3) A faxed request sent on March 19, 2019, by Robert Moore to Field Office Director Corey A. Price seeking to interview Rajandep Singh and Jasvir Singh. The period covered by this request is March 13, 2019, to March 26, 2019. The request includes but is not limited to communications to and from Leticia Zamarripa and Corey A. Price.. Your request was received in this office on April 09, 2019.

Please be advised that DHS regulations require, in the case of third party information requests, a statement from the individual verifying his or her identity and certifying that individual's agreement that records concerning him or her may be accessed, analyzed and released to a third party. See 6 C.F.R. § 5.21(f). Because you have not provided this documentation with your request, we are unable to initiate a search for responsive records.

Please provide the requested documentation within 30 days from the date of this letter, or we will assume you are no longer interested in this FOIA/PA request, and the case will be administratively closed.

This is not a denial of your request. Upon receipt of a perfected request, you will be advised as to the status of your request.

Your request has been assigned reference number **2019-ICFO-33608**. Please refer to this identifier in any future correspondence. To check the status of an ICE FOIA/PA request, please visit <http://www.dhs.gov/foia-status>. Please note that to check the status of a request, you must enter the 2019-ICFO-33608 tracking number. If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office. You may send an e-mail to ice-foia@ice.dhs.gov, call toll free (866) 633-1182, or you may contact our FOIA Public Liaison, Fernando Pineiro, in the same manner. Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, [8601 Adelphi Road-OGIS](https://www.archives.gov/ogis), College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Regards,

ICE FOIA Office
Immigration and Customs Enforcement
Freedom of Information Act Office
[500 12th Street, S.W.](#), Stop 5009
Washington, D.C. 20536-5009
Telephone: 1-866-633-1182
Visit our FOIA website at www.ice.gov/foia

 [ICE 3rd Party Consent Form.pdf](#)
126K

EXHIBIT

22



Robert Moore <bmooreep@gmail.com>

ICE FOIA Request 2019-ICFO-33608

Robert Moore <bmooreep@gmail.com>
To: ice-foia@dhs.gov

Tue, Apr 9, 2019 at 2:14 PM

I am seeking information on how my own interview request was handled by ICE officials. Who is the third party you are referring to?

Robert Moore
El Paso, Texas
[Quoted text hidden]

EXHIBIT

23



Robert Moore <bmooreep@gmail.com>

ICE FOIA Request 2019-ICFO-33608

ICE-FOIA <ICE-FOIA@ice.dhs.gov>
To: Robert Moore <bmooreep@gmail.com>

Wed, Apr 24, 2019 at 5:36 AM

Good morning,

We do apologize for the confusion, it seems a third party consent form was sent in error. What is required from you is a Certification of Identity form which has been sent in a separate email. We do apologize for the inconvenience.

Sincerely,

ICE FOIA

[Quoted text hidden]

EXHIBIT

24



Robert Moore <bmooreep@gmail.com>

ICE FOIA Request 2019-ICFO-33608

Robert Moore <bmooreep@gmail.com>
To: ice-foia@dhs.gov

Mon, Apr 29, 2019 at 11:01 AM

Please find my certification of identity attached, reference number **2019-ICFO-33608**.

Robert Moore
711 Blanchard Ave.
El Paso, TX 79902
915-588-7678
[Quoted text hidden]

 **Certification of identity-RCMoore.pdf**
732K